



PARLIAMENT
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NATIONAL COUNCIL OF PROVINCES
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OPENING REMARKS BY THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES, HONOURABLE N. A. MASONDO, ON THE OCCASION OF THE BUDGET AND FISCAL WORKSHOP HELD FROM 4 TO 5 MAY 2021

DATE: 4 MAY 2021 **VENUE:** VIRTUAL **TIME:** 10H00

Programme Director, Deputy Chairperson of the National Council of Provinces, Honourable Sylvia Lucas

Minister of Finance, Honourable Tito Mboweni

House Chairpersons, Honourable Winnie Ngwenya and Honourable Jomo Nyambi

Chief Whip of the National Council of Provinces, Honourable Seiso Mohai

Honourable Members of Parliament

Honourable Special Delegates

The President of the South African Local Government Association

The Auditor-General of South Africa

Our Esteemed Guest Presenters and Participants

Ladies and gentlemen

Programme Director, like any organisation, our institutions carry certain mandates. It is our responsibility to understand these mandates in order to

carry them out with a view to achieve the intentions of those who crafted them. In the case of the National Council of Provinces, the mandate is simple but, as we know, the operating environment can be complex.

I therefore feel honoured at being afforded this opportunity to make the opening remarks on the occasion of this Budget and Fiscal Oversight Workshop which is held under the theme *Accountability in Public Expenditure through effective Parliamentary Fiscal Oversight*.

The workshop amongst other things seeks to build a shared understanding of the role of the NCOP and Provincial Legislatures in utilising the existing financial and fiscal oversight instruments. These instruments include the Money Bills Amendment Procedure and Related Matters Act of 2018, the Public Finance Management Act of 1999 and the Municipal Finance Management Act of 2003.

I have been asked to make my remarks under the topic *Advancing the Mandate of the NCOP through Effective Budget and Fiscal Oversight*.

The mandate of the NCOP is simple in that it is required by the Constitution to represent the provinces to ensure that provincial interests are taken into account in the national sphere of government. The NCOP is expected to do this by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.

Furthermore, the Constitution places on the NCOP the responsibility to provide space for participation, in its proceedings, of not more than ten part-time representatives designated by organised local government to represent the different categories of municipalities.

In particular, this provision underscores the important role that local government plays in promoting social and economic development in our democratic set-up. It should be read against the backdrop of section 154 (1) of the Constitution, which states that:

“The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions”.

The environment under which the NCOP operates becomes rather complex especially when we take into account what the Constitution seeks to achieve. As articulated in the Preamble, the Constitution directs us to:

- *“Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;*
- *Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;*
- *Improve the quality of life of all citizens and free the potential of each person; and*

- *Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.”*

Programme Director, Parliament’s Oversight and Accountability Model states that the concept of oversight contains many aspects which include political, administrative, financial, ethical, legal and strategic elements. It outlines the following functions of oversight:

- *“To detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies. At the core of this function is the protection of the rights and liberties of citizens.*
- *To hold the government to account in respect of how taxpayers’ money is used. It detects waste within the machinery of government and public agencies. Thus it can improve efficiency, economy and effectiveness of government operations.*
- *To ensure that policies announced by government and authorised by Parliament are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government’s own programmes; and lastly,*
- *To improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery.”*

It is in the pursuit of the constitutional ideals and the functions of oversight which we must carry out that we often get to understand the complex

environment in which the NCOP must discharge its mandate. Hence, from time to time, we need to clarify ourselves so as to ensure that we are effective in the strategies and tactics we employ.

In this regard, the Constitution empowers the NCOP, or its committees, to:

- a) *“summon any person to appear before it to give evidence on oath or affirmation or to produce documents;*
- b) *require any institution or person to report to it;*
- c) *compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of (a) or (b) above; and*
- d) *receive petitions, representations or submissions from any interested persons or institutions.”*

Programme Director, advancing the mandate of the NCOP requires that we do not only understand what it in simple terms it must do, or its complex operating environment, but also the parameters of its sphere of influence. These parameters were deliberately set down by the crafters of the Constitution. Perhaps, in their wisdom, they wanted us to avoid any duplication of effort between the NCOP and the National Assembly.

For example, the Constitution demonstrates the distinct nature of the Houses of Parliament in the manner in which it articulates their respective roles in relation to legislation that falls:

- under section 74 (that is Bills amending the Constitution);
- under section 75 (that is ordinary Bills not affecting provinces, although this definition has always been a source of contention when it comes to the tagging of legislation);
- under section 76 (ordinary Bills affecting provinces); and,
- under section 77 (money Bills).

If we were to follow this logic and take the example of money Bills, we would find that the decision of the NCOP is subject to that of the National Assembly. In this particular case, the Assembly may decide whether to pass a money Bill with or without amendments from the Council.

Programme Director, on the other hand, the Constitution places more weight in respect of the decisions of the NCOP in relation to ordinary Bills affecting provinces. One example in the context of the NCOP's budget and fiscal oversight role is the Division of Revenue Bill, which in terms of the Constitution provides for –

- *“the equitable division of revenue raised nationally among the national, provincial and local spheres of government;*
- *the determination of each province's equitable share of the provincial share of that revenue; and*
- *any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made.”*

It is worth noting in this regard that the report¹ on the NCOP's role in the oversight process published during the 2nd Parliament cites earlier views of different role players with regard to the role of the NCOP in the budget process. One of these views is that because the provinces receive 90 to 95 per cent of their funding from the national government, the national Division of Revenue Bill is the most important piece of legislation that goes through the NCOP. The report points out that the Bill determines whether provinces can follow through on their transformation mandates.

Given the significance of the Division of Revenue Bill in the life of the NCOP, the authors suggest that in processing the Bill, the NCOP should amongst other things ensure that:

- *“the Bill enables provinces and municipalities to fulfil nationally-determined mandates (for instance in education and health);*
- *the Bill permits the fulfilment of national policy goals; and*
- *that conditional grants are reasonable.”*

This demonstrates the important role that the NCOP has to play in the context of the Intergovernmental Relations Act of 1997 which intends:

¹ Prof. Christina Murray et al. circa 2002. Interim Report: Speeding Transformation: NCOP's Role in the Oversight Process. Produced in partnership between the National Council of Provinces, United States Information Service and the National Democratic Institute for International Affairs.

- to promote co-operation between the national, provincial and local spheres of government on fiscal, budgetary and financial matters; and
- to prescribe a process for the determination of an equitable sharing and allocation of revenue raised nationally.

In particular, the Intergovernmental Fiscal Relations Act provides that at least 10 months before the start of the financial year, the Financial and Fiscal Commission must submit recommendations for that financial year to both Houses of Parliament, the Provincial Legislatures and the Minister of Finance. As some experts put it, the Act was “adopted to guide intergovernmental engagement surrounding intergovernmental finances”².

The independent panel report³ on the assessment of Parliament published in 2009 argues that it is important to recognise that the NCOP does not mirror the National Assembly’s mandate by overseeing all of government. And that rather it should exercise oversight over the national aspects of provincial and local government. In addition, it notes that it is the task of provincial legislatures to conduct oversight over the provincial Executives.

Programme Director, participants in this workshop are aware that the Constitution provides that an Act of Parliament must provide for a procedure to amend money Bills. Accordingly, the Money Bills Amendment

² Jaap de Visser and Zemalek Ayele. 2014. Intergovernmental Fiscal Relations in South Africa and the Role of the Financial and Fiscal Commission.

³ Report of the Independent Panel Assessment of Parliament. 2009. Parliament of the Republic of South Africa.

Procedure and Related Matters Act of 2009, as amended, provides for a procedure to amend money Bills before Parliament and for norms and standards for amending money Bills before provincial legislatures and other related matters.

It is important to fully understand the role of the NCOP in the context of this Bill. Such understanding must also take into account the circumscribed role of the NCOP in respect of section 77 legislation (that is money Bills).

It is not a mistake that the crafters of the Constitution saw it fit for the NCOP to be numerically smaller than the Assembly in terms of membership. This suggests that in carrying out their mandates the two Houses were intended to complement and not compete with each other.

It is against this background that one must see the critical role that Provincial Legislatures play in the life of the NCOP.

For some time now the collective capacity of our legislative institutions to scrutinise the implementation of the budget has been called to question. On several occasions the Auditor General has reported significant weaknesses in the management of financial resources, coupled with the failure to comply with relevant legislation. As a result, the Auditor General has put forward a case for the implementation of preventative controls.

In 2020, during the Local Government Week summit, we heard evidence of the poor functionality of some of the Municipal Public Accounts

Committees. These are committees that are established in terms of the Municipal Structures Act in order to strengthen the oversight arrangements in municipalities.

The 6th Parliament has placed great emphasis on the improvement of budgetary oversight in an attempt to improve government's responsiveness and accountability.

This Budget and Fiscal Oversight Workshop is intended to form part of our interventions to enhance our capacity to utilise the instruments that are at our disposal so as to facilitate effective and efficient oversight.

Programme Director, our legislative institutions serve as a critical tool of advancing people's power and fast tracking the transformation of society. They are constitutionally empowered to oversee the Executive branch of government so as to improve efficiency, economy and effectiveness of government operations. This is in order that our people can enjoy an improved quality of life that is promised by our Constitution.

To undertake this important task requires that we have clarity with regard to the collective and individual mandates of our institutions.

I appreciate the opportunity to make these opening remarks and I look forward to the sharing of knowledge over the two days of the workshop.

Thank you.